## THE GERMAN EXCHANGE ACT OF 1896.

BEFORE the imperial act of June 22, 1896, there was almost a complete lack of statutory regulation of transactions on the exchanges. The law of the empire affected only the rights and duties of certain licensed commercial brokers (*Handelsmakler*). There was similar dearth in the legislation of the federal states. In Prussia the consent of the Minister of Commerce was necessary for the establishment of an exchange, and for the adoption or amendment of its rules and regulations; and it was required that these rules and regulations should provide for the determination and publication of the quoted prices. In the different cities of Prussia the supervision of the exchanges took place in different ways. An act of 1870 on chambers of commerce had brought the exchanges of Berlin, Danzig, Elbing, Königsberg, Magdeburg, Memel, and Stettin, under the special supervision of the presiding body (the so-called "Ancients," *Aeltesten*) of the merchants; while in Breslau, Essen, Frankfort, Halle, Cologne, and Posen the same supervision was intrusted to the chambers of commerce. In Düsseldorf the royal government had immediate control, while in Gleiwitz a committee elected by the members of the exchange was in charge. In other States of the Empire the situation was not less confused. In Bavaria an act of 1861 contained certain provisions as to commercial brokers, among which the most important was one putting an end to their monopoly as middlemen. The legislation of Saxony and Würtemberg went back to the same period, and was of the same general character. In the free cities of Hamburg, Lübeck, and Bremen the situation was somewhat peculiar. Here public brokers no longer existed: the brokerage business was open to free

competition. The abolition of the system of officially appointed brokers took place in Bremen in 1867, in Hamburg in 1871. In the three Hanse cities the exchange was a simple free market, to which, according to the Hamburg regulations of 1891, "every respectable person of the male sex" had access. On the whole, then, transactions on the exchanges were governed chiefly by rules and regulations of their own, varying greatly according to their historical development.

The possibility of regulating the exchange transactions by central authority arose as business methods became more and more uniform, and as a result of the more international character of exchange transactions. The desire for regulation by the empire was first publicly manifested in 1888 through petitions to the Reichstag demanding a remedy for evils which had arisen in the Berlin grain trade and the Hamburg coffee trade. The immediate impulse to legislation came from disastrous failures of certain banking houses in the autumn of 1891, which were connected with criminal misuse of their deposits, and which indicated, moreover, undue participation in speculative transactions by the general public. In November, 1891, bills directed against speculation on the exchanges were introduced. As early as February 16, 1892, the Chancellor of the empire appointed a Commission of Inquiry of twenty-eight members, most of them lawyers, but with representation also of landed proprietors, economists, and merchants. The chairman was the President of the Directorate of the Reichsbank, Dr. Koch. The Commission began its inquiries in April, 1892, held 93 sessions, and summoned 115 witnesses, of whom the great majority were persons engaged in the transactions which it was proposed to regulate. The Commission also made inquiries as to the state of legislation and the trade usages in the several states of the Empire and in foreign countries. All the inquiries of the Commission were based on

a schedule of questions which had been prepared in advance, and which touched only exchange transactions, carefully refraining from the consideration of other, even though related, topics, such as corporation and bank law. The subjects of inquiry were grouped under five heads, namely: (1) organization of exchanges; (2) emission of securities; (3) contracts for future delivery; (4) brokerage and prices; (5) dealings on commission. Only a partial separation was made in the inquiry between stock exchanges and produce exchanges. In my judgment, this was a great mistake, though one easy to explain. It arose from the fact that in Germany there is no such division of labor between the exchanges as exists in England and in the United States. The stock and produce exchanges in Germany, and especially in Berlin, are a single institution, having the same officers and using the same premises. This circumstance also explains why not two acts were passed, but a single act affecting both sorts of transactions.

The Commission presented a majority report on November 11, 1893, recommending certain statutory and administrative changes. The principle on which these recommendations rested was that, "in view of the importance of the interests which were represented at the exchanges, modifications should be made with caution, and the existing complicated trade usages and methods should not be disregarded; while, on the other hand, there was no occasion for regarding with mistrust, still less with hostility, interference in the free working of industrial forces."

The report of the Commission was laid before the Reichstag and the Bundesrath. April 19, 1894, the Reichstag passed a resolution requesting the federal governments to prepare at the earliest opportunity an act based on the report. On December 25, 1895, a bill for regulating the exchanges, as well as another in regard

to the duties of merchants having the custody of securities, was laid before the Reichstag. The Exchange Act became law on June 22, 1896; that on the custody of securities, familiarly known as the Deposit Act (*Depotgesetz*), on the 5th of July. The Exchange Act went into effect on January 1, 1897, the Deposit Act on July 31, 1896.

The cautious position taken by the Commission was not in every respect maintained in the act as passed. Chiefly in consequence of agrarian agitation, the government first, and then the Reichstag, made one requirement after another more stringent, and so finally gave the measure a form in which it may fairly be said to be hostile to the exchanges.

The Exchange Act may be divided into five main parts, containing provisions on the following subjects: (1) general organization; (2) quotations of prices and the duties of brokers; (3) the listing of securities; (4) transactions for future delivery; (5) dealings on commission. These several parts of the act we will follow in their order.

### 1. *Organization of Exchanges.*

The act compels no general change in the organization of exchanges. It contents itself with establishing a general right of supervision on the part of the Empire, enlarging the power of control by the several states where this had already existed, and establishing it where it had not before existed. The law does not compel exchanges to assume corporate form. This mode of organization, on the plan of the English and American exchanges, had been suggested in many quarters; but it was rejected because it was feared that a plutocratic limitation of membership would serve to prevent "intelligence without capital" from having its opportunity. We need not stop to inquire whether there was foundation for this fear. The

substantial reason for the procedure which was followed is that a segregation of the different sorts of transactions is an indispensable condition of organization in corporate form, and that such a division of labor does not yet exist in Germany. In England, for instance, banking operations are largely specialized. The several operations of emitting securities, of buying and selling on commission, of discount and deposit, are completely separated. In Germany, on the other hand, the characteristic feature of the banker's business is the combination of all these operations in a single establishment.

Supervision over the exchanges is exercised in general by the several federal governments. The Empire takes no share in their current supervision, partly because it has no machinery which could lend itself readily to this purpose, partly because it is not in a position to pay due regard to local needs. The imperial authorities, consequently, are concerned with the administration of the act only on points where the interests of the Empire as a whole may be affected.

It is on certain specified subjects, accordingly, that the Bundesrath is empowered to make rules. First, it may regulate public quotations of prices: it may provide a different method of establishing market quotations than the usual one at the hands of the quotation brokers (*Kursmakler*), of whom more will be said presently. This provision was inserted in the interest of the free cities, in which, as we have already noted, the system of official brokerage had been abolished. The Bundesrath may further establish general rules as to the quotation of prices of specific commodities. This power was given to prevent any failure in securing official prices of commodities for which such quotations might be desired in the interests of the Empire as a whole. And, finally, the Bundesrath may determine what units of quantity shall be used in quoting prices of commodities, and may regu-

late the methods of quoting the prices of securities. The object of this provision was to prevent discrepancies in quotations which might mislead the general public. Second, the Bundesrath has certain powers in regard to the conditions under which securities may be issued. The terms under which securities may be listed on the exchanges are subject to this regulation. Third, it may regulate transactions for future delivery, fixing the conditions under which such transactions are to be permitted or entirely forbidding them with respect to specified commodities or securities. Fourth and last, the Bundesrath has power to forbid participation in exchange transactions by particular branches of trade or to make such participation depend upon the fulfilment of certain conditions. It may thus prevent commodities from being dealt with on the exchanges which are not adapted to their methods.

In the execution of these powers and duties the Bundesrath has the aid of a body of experts known as the Exchange Committee (*Börsenausschuss*). This committee contains representatives, on the one hand, of all the German exchanges; on the other hand, of various other interests, such as agriculture, milling, manufacturing, general trade. It has at least thirty members, all appointed by the Bundesrath, but one-half on the nomination of the exchanges. The members thus appointed on the nomination of the exchanges have still another function. From among them are selected the representatives of the exchanges on the Court of Appeals for the Courts of Honor, — an interesting part of the new organization, which will presently be described in detail.

So much as to the powers of the Bundesrath. Those of the governments of the federal states are stated in much more general terms. They exercise a general supervision over exchanges. The act enumerates, among the powers derived from this general authority, that no exchange shall be established without the consent of the

government of the state concerned, and that all the regulations of the exchanges and of clearing houses, and arrangements for settling transactions, are subject to their control. The rules of the exchanges must be approved by them. The states are further authorized to require the insertion of specific provisions in the rules. More particularly, they may require that there shall be a due representation on the produce exchanges of the agricultural and milling interests. The last-named requirement should be specially noted, because it has become of decisive importance in the operation of the act.

In general, each state government is free to act as it chooses in the exercise of its supervising authority. One requirement, however, is made, — for the appointment of a State Commissioner. It is the duty of this official to supervise the conduct of business on the exchanges, and their conformity to the laws and regulations of the respective governments. He is to call the attention of the officers of the exchanges to abuses, and to report on the means of correcting them. The Commission of Inquiry had proposed much more restricted functions for the Commissioner: he was simply to take part in the proceedings in the Courts of Honor (presently to be described). This part of the machinery of the act is borrowed from the legislation of Austria, which in 1875 had created such an official, and had given him general supervising authority. His position under the German law is different. He is simply a representative of the government of the state, and may be described as the connecting link between that government and the exchanges. He acts as the representative of the Minister of Commerce, and under his orders.

In the bill as originally laid before the Reichstag the Commissioner had been called upon simply to "take note of" (*beachten*) the course of business on the exchanges. He was to be simply an impartial spectator, who should

familiarize himself with the usages of the place, and should be in a position to give advice and to suggest remedies for abuses. The act as passed, however, makes him not an observer, but rather a prosecuting attorney, a policeman lying in wait. He is not simply to take note of the proceedings at the exchanges, but to oversee them (*überwachen*). The creation of the office was declared in many quarters to be both unnecessary and unpromising. Its practical efficiency must depend largely on the tact of the individuals appointed to these places. The task of selecting an official capable for the post certainly must always remain difficult. It should be noted, before leaving this subject, that the appointment of a State Commissioner may be dispensed with in smaller exchanges, and that, with the permission of the Bundesrath, his activity in particular towns may be restricted to participation in the proceedings of the Courts of Honor.

The governments of the several states are not obliged to shoulder for themselves the duty of oversight. They may delegate it to chambers of commerce or other commercial bodies. Whatever body is charged with the immediate oversight is entitled in the act the Supervising Board (*Börsenaufsichtsbehörde*), while the body which is charged with the direct administration of the exchanges is called the Presiding Board (*Börsenvorstand*).

Although thus free in many ways, the state governments are, nevertheless, required to do certain things. They must conform to requirements as to the insertion of certain provisions in the rules of the exchanges, and as to the persons who may be admitted to the exchanges. Certain principles are laid down as to the conduct of transactions on the exchanges and as to the mode in which dishonorable conduct is to be punished.

According to § 5 the rules of each exchange must contain provisions: (1) on the government of the exchange; (2) the branches of trade which are to take part; (3) the

terms of admission; (4) the manner in which quotations of prices shall be published. As to the details of these requirements, we need only note those which refer to the conditions of admission. Women may not be admitted to the exchanges, nor persons who have lost their honorary civil rights (*bürgerliche Ehrenrechte*), who have become bankrupt, whose control over their property is limited by law, and, finally, those who have suffered conviction in the Courts of Honor of the exchanges themselves.

One of the most interesting institutions created by the act is the Court of Honor. Here the endeavor is made to introduce into the mercantile community a mode of procedure already in use elsewhere, as in the legal profession and in the army. The standard of professional honor in transactions on the exchanges is to be maintained by the judgment of the merchant's peers. The application of this principle, in itself certainly sound, is made difficult in Germany by the fact that the individuals who take part in exchange transactions do not form a homogeneous body. Hence there is no well-defined standard of professional honor. But the creation of the new Courts of Honor may aid in developing such a standard.

The members of the Courts of Honor must be selected from the trades which take part in the exchange transactions, or from allied trades. The chamber of commerce, or other commercial body, is intrusted with the immediate oversight of a given exchange. This body as a whole, or a committee of its members, forms the Court of Honor. In the language of the act "it may call to account such persons, frequenting the exchange, as have been guilty, in connection with their business at the exchange, of dishonorable conduct or of conduct which would forfeit the confidence of merchants." The expression "frequenting the exchange" is of doubtful import. One would suppose that the important fact would be not attendance at the exchange, but the transaction of business. It is per-

fectly possible, for example, that a woman may own a banking business, and be guilty of dishonorable conduct; yet a woman may not attend the exchanges, and so may not be judged by the Court of Honor.

The act in no way defines what transactions are subject to review by the Courts of Honor. But it is probable that certain sorts of conduct which had been carefully described in the report of the Commission of Inquiry are contemplated in this part of the measure. The Commission had mentioned such cases as the following: manipulation of quoted prices, especially by fictitious sales or by false rumor; giving or taking of presents for the purpose of affecting statements in the public press, in favor of or against given industrial enterprises; the conduct of business in a manner inconsistent with mercantile honor; conduct in the emission of securities which would be ground for a suit for damages; dishonorable instigation — by word of mouth, by letters, by advertisement — to speculation outside the usual course of business of the persons addressed. Another case, described with similar care, was the transaction of business at the exchange for clerks or other employees, without the consent of their employers, provided that the position of such persons was known, and provided further that there were no special grounds for believing the transactions to be warranted by the property or business of such employees or of their families. Still another was the transaction of speculative business with persons in a dependent position or of limited means, or with persons whose usual business would not ordinarily entail such transactions; provided the transactions took place on a scale obviously discordant with the general business position of the persons concerned, and when all these circumstances could not with ordinary care escape the notice of the dealer. A different sort of case was the repeated and presumably conscious endeavor to meet contracts by the offer of commodities not of the agreed

grade or quality. Such conduct, not easy to deal with by the usual processes of the law, is to be reproved by the Courts of Honor.

The procedure before the Courts of Honor is in general like that of German criminal law. The State Commissioner acts as prosecuting attorney. The only punishment is permanent or temporary expulsion from the exchange or from all German exchanges. No fines may be imposed. Appeal may be made from the Court of Honor to the body already referred to, which is selected from the Exchange Committee appointed by the Bundesrath. This appellate body consists of a presiding officer appointed by the Bundesrath and of six other members selected by the Exchange Committee from among its own members.

Still another institution in the organization of the exchanges is the Board of Arbitration. The Board of Arbitration has jurisdiction where the parties, after a dispute has arisen, agree to submit it; but, if both disputants are merchants, or if both are entered in the register of transactions for future delivery (see below, p. 406), there is no jurisdiction. This limitation was designed to prevent resort to the Board of Arbitration in ordinary disputes between dealers.

### 2. *Price Lists and Brokers.*

The position of the law in regard to brokers is of importance, because it is through them that quoted prices are made up and published. These prices are of wide-reaching importance for the community. They affect not only those who deal at the exchanges, but all persons who buy or sell commodities or securities. The exchanges measure the value of property for a large part of the population, — a measurement often decisive not only for their business affairs, but for their domestic expenditure. The prices fixed at great central exchanges reach out into the most

distant cities and villages of the provinces. Where goods are bought or sold on commission, the commission dealer compels their acceptance by his customer. The grain dealer in the provinces makes them the basis for his purchases from the peasant. The banker in all smaller centres makes them the basis of sales and purchases of securities for his customers.

The object of the new act is to cause prices to be so quoted as they would be in real and substantial transactions at the exchanges, uninfluenced by fictitious or dishonest manipulation. The quotations are to be a mirror of transactions which have actually taken place at the exchanges, and are to give information as to the quantities and prices which have been offered, demanded, and accepted.

As to the legal position of brokers before the act, it is to be noted that there was no general system either of free brokerage or of public brokers under oath (*vereidete Makler*). It was only in the Hanse cities that the system of public brokers had been entirely done away. Elsewhere private and public brokers competed for business, the latter having no monopoly as middlemen in the transactions. In practice there was not infrequently a monopoly, though a qualified one, for the public brokers. This, for instance, was the case in Berlin as to all cash dealings, — a consequence of the peculiar manner in which spot prices had come to be fixed in Berlin.* On the other hand, transactions for future delivery had fallen more and more into the hands of private brokers and organizations of brokers, partly because in such dealings a broker must be something more than a mere commission agent, and, assuming some responsibility on his own account, must have means of his own.

This general situation has not been changed by the new

* *Cf.* my essay, *Kursfeststellung und Makler-wesen an der berliner Effektenbörse*, in *Jahrbücher für National Oekonomie*, 3d series, vol. xi.

act, and probably could not have been changed by any legislation. The act simply regulates anew the business of the public brokers. The legal position and liabilities of the private brokers are to this day not definitively regulated, being left for future settlement in the new commercial code now in course of preparation.

From the text of the act it might be supposed that the institution of public brokers is entirely done away. In fact, however, it is only remodelled. Section 34 reads: "The official appointment of brokers, for the conduct of exchange transactions, as provided for in article 66 of the commercial code, shall no longer take place." Nevertheless, public brokers reappear under a new name, that of "quotation brokers" (*Kursmakler*). Their official character remains the same, and the field of their operations is not changed: they are simply relieved from certain obligations imposed on them by previous legislation,—obligations of a sort to which in practice they could not conform. The legislation which preceded had provided that public brokers should not undertake directly or indirectly transactions on their own account, not even as agents of others, and should undertake no responsibility and assume no guarantee in the transactions for which they acted as middlemen. This sweeping prohibition had proved impossible of enforcement. As modern business is conducted, its violation was inevitable. The new act consequently is more liberal. It provides that "quotation brokers, in branches of trade for which they determine the quoted prices, may carry on operations on their own account, or assume responsibility, *only* so far as may be essential for the fulfilment of orders which shall have been intrusted to them as middlemen." It is not to be denied that some such restriction as the concluding clauses make is desirable, but it remains to be seen whether the new regulation will prove of much practical value. Its working must depend upon the extent to

which effective supervision proves possible. On this score the act simply provides that the governments of the several states shall legislate as they see fit. In the rules of the Berlin Exchange, issued December 8, 1896, the Minister of Commerce reserved for further consideration the regulation of these matters.

The freer position of the quotation brokers appears also in the privilege which is given them to accept orders from persons not present at the exchange, and to make use of the services of sub-brokers. In essentials, however, they still have the duties of the former public brokers. They must keep ledgers and day-books, and must make out memoranda of sale (*Schlussnoten*) on the transactions settled through them. Except by permission of the state government they may not engage in any other business, — not even as silent partners,— nor may they accept any position as agent nor act under powers of attorney.

A commendable new institution created by the Exchange Act is the organization of the quotation brokers in the Brokers' Board. This board is to be consulted on the appointment of new quotation brokers and on the apportionment of business among the individual brokers. In this body it is expected that there will be a convenient make-weight against any interested policy pursued by the Presiding Board of the exchange.

It is to be observed that the quotation brokers have one distinct advantage over private brokers, in the provision that only those transactions which are effected through them must be considered in the official price quotations. In legal contemplation these prices are fixed by the Presiding Board. In fact, they must rest upon the data from the quotation brokers. It is true that the Presiding Board has authority to consider transactions effected through private brokers; but it is under no obligation to do so. The act nowhere enumerates the commodities whose prices are to be officially quoted through the exchanges. It is only

provided that, as to such commodities as may be officially quoted, the Presiding Board shall publish cash prices and also prices for future delivery. The Bundesrath, however, has the power to prescribe official quotations of specific commodities at any one exchange or at all exchanges.

### *3. Listing of Securities at Exchanges.*

The Exchange Act contains certain provisions as to the terms under which securities may be admitted to be dealt with at exchanges. These provisions are the result of a belief that German capital should be protected from losses such as it has experienced in recent years, more particularly in foreign securities. The importance of admission or listing is obvious enough. At the Berlin Exchange, apart from certain gold mining securities which have sometimes been dealt with in the so-called Kaffir market, there has never been active dealing in unlisted securities; and only listed securities find easy access with the general public. For the protection of that public the act more especially undertakes to regulate the composition of the Listing Boards, endeavoring to prevent undue representation of the banking and emitting interests. At least one-half of the members of the boards must consist of persons whose names are not entered on the Register of Securities. The composition of the other half is to be settled by the regulations of the respective exchanges. We shall have occasion presently to describe more fully the register here referred to; but it may be well to point out at once that the expectation that all persons who deal habitually in securities would register their names has been by no means fulfilled. Hence the provisions just described fail to give a full guarantee that the investing public will be adequately represented on the listing boards. The proposal contained in the bill as laid before the Reichstag had been more careful: it had provided that one-half of the

members of the Listing Boards should be persons not regularly taking part in transactions in securities at the exchanges.

The Listing Board has the following duties. It shall require that the documents on which new securities rest shall be laid before it, and it shall inspect them. Further, it shall see that all pertinent facts and all questions of law in regard to securities are stated to the public as fully as possible; and, if it finds the statements in this regard incomplete, it must refuse to list the securities. Finally, it is to permit no emissions which may injure considerable general interests (*erhebliche allgemeine Interessen*) or which will obviously cause the investing public to be defrauded.

For the rest, the Bundesrath has authority to prescribe further the conditions under which securities may be listed and the duties of the Listing Boards. Thus it may determine the minimum capital and the minimum amount of the separate shares on each exchange. In the regulations issued (December 11, 1896) the Bundesrath has required for the exchanges of Berlin, Frankfurt, and Hamburg a minimum capital of one million marks, and for other exchanges a minimum of one-half million marks.

The general intention of these provisions obviously is that the Listing Board shall see simply that the statements needful in order to judge of a security are presented; but it is in no way to judge of the solidity of the security. The investing public is to be put in a position to judge for itself. Hence the act requires in all cases — barring only loans by the empire and by the several states — a prospectus. The nature of the statements which must be made in this prospectus is set forth in detail in the regulations under this section by the Bundesrath, December 11, 1896. These regulations adopt the same principles (so it is stated in terms) as were followed by the committee which formerly had charge of the same matter at the

Berlin Stock Exchange. The following facts must be stated in the prospectus: first, the legal authority for the issue of the security, whether a statute, a concession, a corporate contract, or what not; second, the purpose for which the security is issued, the total amount, and the proportion offered to the public at the time; and, third, the main features of the security, especially whether they are to bearer or registered, whether they are redeemable or irredeemable, and whether there is a sinking fund. It should be noted also that securities must be full paid, must be in terms of German money, and that interest or dividends must be payable in some German exchange city.

The importance of the prospectus is greatly increased by the fact that it is closely connected with the provisions as to the liability of the emitting concerns. Before the act their liability from the prospectus was doubtful, the common opinion being that liability arose only in case of intentional misstatement. Under the new measure a distinction is made, according as the statements made in the prospectus are inaccurate or are incomplete. If statements important for the value of the security are inaccurate, the emitter is liable, not only if he knows of the inaccuracy, but if he must have known of it or was guilty of gross negligence in failing to know of it. If the statements are incomplete, he is liable only if the omitted statements are essential, and if their omission is a result of fraudulent intention. Liability is thus fastened not only on the persons who issue the prospectus, but upon those who bring it before the public. The liability is ordinarily a civil one; but, where knowingly false statements are made with intent to defraud, there is criminal liability also. The civil liability for damages, extends not only to the first purchaser, but to any later holder of the security, provided that the damage is ascribable to the existence of facts different from those set forth in the prospectus. The liability, however, is subject to limitation in several ways. It applies only to

such securities as have been listed on the basis of the prospectus, and have been acquired by the holder through a transaction concluded in Germany. The person liable is relieved if he takes the security, paying its holder either its purchase price to him or its price at the time of emission. There is no liability, further, if the holder was aware of the incompleteness of the statements in the prospectus, or, in case of inaccuracy, if he could have known of the inaccuracy by exercising such care as he would have exercised in his own affairs (*diligentia quam suis*); provided, always, that liability remains in case of fraud. All liability ceases five years after the listing of the security; and, finally, contracts limiting this liability are void, while those enlarging it are permitted. Criminal liability arises only if statements known to be false and made with intent to defraud are contained in the prospectus. The penalty is imprisonment and fine up to 15,000 marks, with possible less of honorary civil rights.

Even though the prospectus conforms to all requirements of law, the Listing Board is nevertheless empowered to refuse listing, without any statement of reasons. The Listing Board of one exchange may not admit a security which has been rejected by another board without the consent of the latter, unless it appear that the refusal was the result of local considerations only.

If listing is refused, the security may not be officially quoted; it cannot be dealt in through quotation brokers; the premises of the exchanges may not be used; the quotations may not be published in the price lists. But no one is prohibited from dealing otherwise in rejected securities.

The provisions just described are designed to prevent an undue vogue of doubtful securities after they have come into existence. Another part of the measure, which went into operation as early as July 1, 1896, is designed

to impede the creation of a certain class of new securities. It is provided that shares in any stock company, or in any concern organized in shares with limited liability, are not to be listed until one year has elapsed from official registration, and in no case before the publication of the first annual balance sheet. The design is to prevent the spread of new undertakings and especially of doubtful ones. Whether the attempt will prove successful cannot now be said. But it is certain that the calculations of the banker will be made on a very different basis if he is unable to market securities immediately after incorporation, and that his risks will be much greater if he takes any considerable part of the shares himself. Conditions may be very different after the lapse of a year. Of course, it is possible that he may try to avoid this risk by taking only an insignificant part of the shares himself at the time of incorporation, reserving simply an option as to the rest. It is possible also that fewer reorganizations into corporate form will take place. Something like trusts may be formed: existing corporations may absorb allied undertakings, simply increasing their own capital. A development of this sort, however, would not be inconsistent with the general trend of the act, which welcomes the drift to undertakings on a large scale.

### *4. Contracts for Future Delivery.*

The Exchange Act restricts contracts for future delivery in two directions. First, it limits the commodities which may be sold for future delivery at exchanges; second, it limits the persons who may take part in such sales.

We may begin with the restrictions as to individuals. The privilege of selling for future delivery is made dependent on a form, — an entry in a book, the so-called Exchange Register. The act requires separate registers

for securities and for commodities. No legal liability can arise from a transaction for future delivery unless both individuals at the time of the transaction are registered in the proper volume. This applies to orders given or commissions undertaken, as well as to final agreements for purchase. All guarantees and all evidences of debt arising from such transactions are equally void. It is only provided that, if agreements have been completely carried out, restitution can no longer be called for.

These provisions apply only to transactions of Germans, but apply to these whether the transactions have been begun or ended within or without Germany. A German is defined for this purpose as any person who has a domicile or a place of business in the Empire. As to persons who have neither a domicile nor a place of business in Germany, registration is not essential for the obligation of their contracts. Hence a foreigner may make binding sales for future delivery within Germany without being registered; and a German, provided he is registered, may make such transactions with foreigners. Persons not required to make registry cannot plead in a court of law that transactions did not contemplate delivery. Registry is subject to a fee of 150 marks for the first entry, and thereafter to an annual charge of 25 marks.

The pressure by which registry is to be brought about is thus not direct, but indirect. The act does not compel those who wish to buy or sell for future delivery to register, but only says that those who fail to register cannot make contracts binding in law. On the other hand, those who are registered have a further advantage in that, as to them, the act brushes aside the plea, formerly available, that actual delivery had not been contemplated. To understand the object of this provision, it must be observed that the courts of the empire had held contracts to be non-enforceable, if contemplating solely the payment of differences and expressly dispensing with actual de-

livery. Nay, in late years there have been decisions intimating that these contracts could not be sued upon if the circumstances were such as to indicate that the actual delivery was not contemplated. The act was designed to put an end to the uncertainty as to the legal situation which had arisen from these decisions. How far this object has been attained in fact, we shall have occasion to consider presently.

So far as substantial restrictions on transactions for future delivery are concerned, the act makes the following provisions. The Bundesrath has authority to forbid transactions for future delivery at the exchanges, both for goods and for securities, or to prescribe the conditions under which they shall be carried on. The exchange authorities are to decide who is to be admitted to such transactions. The consequences of non-admission are once more that the prices may not be officially quoted, that the transactions may not be carried on through the quotation brokers, and that the premises of the exchanges may not be used.

The most radical restriction on the dealings in securities for future delivery is the complete prohibition of transactions of this sort in the case of mining and manufacturing securities. The shares of other undertakings may be so dealt with only if the capital of the corporation is at least twenty millions of marks. It would seem from the mode in which these provisions have been framed that they are to have no retroactive effect. At all events, they have been so construed by the exchange authorities; and dealings for future delivery in the securities of existing corporations whose capital is less than twenty millions of marks have continued. This limitation on the basis of the capitalization of the undertakings is designed to prevent excessive fluctuation in prices and especially "corners," such as may occur in the case of securities whose amount is narrowly limited.

Much more important, however, than these provisions as

to securities are those as to the purchase and sale for future delivery of goods, and especially of grain. In section 50 the act prescribes in brief but uncompromising terms, "Dealings for future delivery at the exchanges in grain and in mill products are prohibited." This drastic clause was not contained in the proposals of the Commission of Inquiry, which had limited itself to suggesting a register similar to that just described for securities (the register for securities had not been proposed by the Commission, but had been inserted in the government bill, and later incorporated in the act). The government bill also did not contain the prohibition as to the grain trade. The Reichstag, however, on May 1, 1896, inserted it by a vote of 200 against 39. The negative votes all came from the Progressists, Democrats, and Social Democrats.

To understand how the government and the legislature were moved to adopt so reactionary a policy, we must bear in mind the repeated attacks of the agrarians on this phase of the grain trade. In substance, they maintain that the fall in the price of grain in recent years is to be ascribed chiefly to the practice of sales for future delivery. A classic example of the reasoning of the agrarians may be cited from a recently published pamphlet.* The author tries to show that there is no general over-supply of grain, which must be sold at any price; that Germany has not in recent years needed any considerable (*sic*) importation of grain, in order to feed its population; and, finally, explains the notoriously large importations into Germany in the following terms: —

> If, then, foreign countries are under no real necessity of disposing of the grain which they send to Germany, and if Germany is under no economic necessity of buying this grain, what is the explanation of the movement? The answer is simply this: the imports are brought in for the express purpose of consummating speculations at the exchanges. These gambling operations take the following course.

*E. Klapper, *War die Börse reformbedürftig?* Reprinted from *Frühlings Landwirthschaftliche Zeitung*, Berlin, 1897.

The bear party, the sellers of the paper representatives of commodities, is composed mainly of the professional dealers. The bull party, on the other hand, the buyers in these gambling transactions, is chiefly composed of the general speculative public outside the professional circle. This public engages in the operations of the exchange through its bankers and brokers. Under these circumstances it is obvious that there cannot be ordinarily any adequate demand to meet the supply offered by the speculative sales of the bears. The transactions are simply liquidated by paying differences. All the statistics of all the exchanges in the world show that the transactions which are settled in this way are enormously greater, — fifty-fold greater,— than the transactions in which there is actual delivery. Hence we have the contradictory, even absurd result, that the actual holder of grain, if he be also a seller for future delivery, not only has no interest in keeping the price of his actual supply high, but has an interest in keeping its price low; nay, he is moved to sell his own actual supply at the lowest possible price, in order to profit from the speculative dealings in which he is on the bear side. He gains more in the transactions settled by mere payment of differences than he loses on the sales where he delivers grain for cash. The cheaper he sells his goods, the greater his profits. These profits are paid by the great public of non-professional speculators. It is hardly necessary to say that for the success of such operations it is necessary that the speculator should have at his disposal a supply of grain in excess of that wanted at the particular time and place, which will enable him to depress prices at will. These supplies cannot be easily secured within the country: hence they must be got abroad. Here we have a complete explanation of the anomalous circumstance that, notwithstanding our own ample crops, Germany is encumbered with the swollen imports of foreign grain.

It is not possible within the limits of the present article to analyze this sophistical reasoning, in which there is much error and a little truth. The reader is referred to the excellent discussions of this topic at the hands of Max Weber, Gustav Cohn, J. Conrad, David Cohn, and Stephen von Tisza. It may be remarked that it is absurd to speak of such a division of bulls and bears as the agrarians assume. The one set is as strong as the other. The grain dealer's interest, in fact, is rather that prices should be high than that they should be low, not only

because his commission depends on the total money extent of his sales, but still more because participation by the general public in exchange transactions is always greater when prices are rising. If there is to be any question of blame in regard to the increase of imports, the German agricultural producer is at fault, in having steadily increased during the last twenty years the cultivation of inferior wheat, so-called English or "rough wheat," with the object of raising his tonnage to the maximum. It has become more and more difficult for the bakers to use domestic wheat without admixture, and it has become necessary to mix it with Russian and American qualities. The inevitable result has been an increase of imports and a higher price of the foreign supply.

The act permits transactions for future delivery in spirits, linseed oil, and raw sugar; but the transactions are enforceable at law only if registered on the exchange register. It is significant that even these commodities may be admitted to be dealt with for future delivery only after consultation with persons engaged in their production, whose opinions must first be communicated to the Imperial Chancellor. They may be admitted to be so dealt with only after the Chancellor reports that he does not believe further inquiries to be called for.

### *5. Dealings on Commission.*

The legal relation between the commission dealers or brokers and those on whose behalf they buy or sell has been thoroughly overhauled in the act. The commission dealer has been given the right to take the place of his principal. On the other hand, he has been subjected to greater restrictions so far as prices are concerned. The object of the new act is to prevent the dealer from charging his principal a less favorable price than he has himself secured. The practice of cheating (so we may call it) in the matter of prices had been practically subject to no

penalty. The provisions of the penal code could be resorted to only in very few cases. Resort to this unsavory practice was most common and most profitable in dealings for future delivery, but it could be done equally in cash transactions. The act now endeavors to stamp it out by the following provisions.

The commission broker is authorized to act as principal as to all commodities which have a market price or exchange price. In the case of securities, however, he can do so only if there is an officially quoted price. This latter provision puts stricter limits on the dealer than had been the case under the general commercial code. By this the dealer could step in as principal in any case, whether as to securities or as to goods, if there was a market price, whether or no an official one. The limitation of this privilege in the case of securities to such as have officially quoted prices rests upon the assumption, reasonable enough, that, where prices are officially quoted, the good faith of the broker can be easily tested by reference to these quotations. If, now, the broker does step in as principal,— as is almost invariably the case,— his only duty under the new act is to show that he has charged the official price at the time when he executed the commission. Obviously, however, it is simply a question of intent whether the broker assumes the part of principal in making the sale or purchase; and hence the question arises how to decide the precise point of time at which he thus steps in as principal and at which he is responsible for buying or selling at the official prices. The act accordingly provides that the date of notice by the broker to his customer is the date at which the broker is responsible for the public price. To prevent the possibility of fraud upon the customer by a belated notice, the following further provisions are added. (*a*) If notice is given after exchange hours, the price may not be less favorable to the customer than the closing price.

(*b*) If instructions have been given for transactions at stated points (say at the opening price, closing price, middle price), this price, and no other, must be charged to the customer. (*c*) The broker may not charge his customer a less favorable price than that officially quoted; but the customer may be entitled to a more favorable price. For the act provides that, if a broker by acting with due care could have secured for his customer a more favorable price than that which the provisions just described would fix, he is accountable for this more favorable price, even though he undertakes himself to act as principal. If, before sending notice to the customer, he has made a bargain with a third person on the basis of the orders given him by the customer, he cannot charge his customer a less favorable price than that secured from such third person. It is to be remarked, too, that an agreement inconsistent with these provisions is void. The broker who violates them may be prosecuted in the Court of Honor. Indeed, he may become liable to criminal penalties; for a later section provides that a broker who intentionally secures a profit to himself to the disadvantage of his customer is punishable with fine and imprisonment. It is unquestionable that the language of the act subjects to similar penalties those who knowingly charge false prices.

We may note at this point certain provisions which affect the so-called *Schlepper*. The activity of these persons is closely connected with the brokerage and commission business, and the provisions affecting them ought to have a thoroughly wholesome influence. The terms of the act here are very general, and consequently not above criticism. Nevertheless, by and large, they are probably the best that could be devised. They punish with imprisonment, and fine up to 15,000 marks, and possibly with loss of honorary civil rights, all who habitually entice inexperienced persons to speculative transactions at the exchanges with the intent to make a profit from their

lack of knowledge or of prudence, provided that the transactions are outside the usual course of business for such persons. The last-named proviso prevents the penalties from being enforced unless outsiders are enticed to speculation. The somewhat vague terms of this section, necessarily leaving much to the discretion of the judicial authorities, are perhaps for that very reason likely to be of wholesome effect, through the fear that they may arouse of a very broad construction.

Among the other penal provisions of the act we may note finally those which refer to direct or indirect bribery of the press. These were inserted in the measure in its last stages at the suggestion of the committee of the Reichstag. They are of a sort to check effectually the illegitimate use of the public prints. The penalties of fine and imprisonment are imposed on those who publish or suppress in the public press matter designed to influence exchange prices, provided that for such publication promises or advantages are given which are obviously disproportionate to the legitimate services of publication. In addition to criminal proceedings there may be proceedings before the Courts of Honor.

Before proceeding to the discussion of the working of the Exchange Act, we may consider for a moment another closely related measure. The act of July 5, 1896, known as the Deposit Act (*Depotgesetz*), is of importance because it affects the legal relations to their customers of bankers, brokers, and others having custody of securities. It is designed to define those legal relations to the advantage of the customer, and to make certain that he retains the title to securities placed in the hands of bankers. The act provides not only for bankers, but for all merchants, that securities deposited or pledged in their hands are to be kept apart from their own property and from the property of others, with recognizable external indication

of such deposit or pledge. The depositor or pledger is held to dispense with such separation only if he does so in writing for each individual transaction. These provisions, however, do not apply where both parties are bankers or brokers. A dealer who buys securities on account of a customer must send to the customer within three days a memorandum; and here, too, the customer is held not to dispense with the requirement unless he does so in writing for each individual transaction. With the despatch of this memorandum, if not earlier, the securities become the property of the customer; while the provisions of the civil code, under which it is possible for title to pass at an even earlier date, still remain in effect. The criminal penalties imposed by the new act in case of defalcation are severe and explicit.

It may be doubted, however, whether the Deposit Act will prove of much practical importance. The provision by which the customers may dispense with its provisions is almost universally made use of. The bankers and brokers have simply inserted in their blank forms for customers certain phrases by which the customers dispense in terms with the safeguards which the legislature designed to establish for him. Consequently the act has brought about no real change in the situation. There has been some increase of clerk work in the brokers' offices; but the legal security of the customers has become no greater and no less.

It is always a delicate matter to discuss the working of a measure which has been in operation for but a short space of time. It is difficult enough, even after some lapse of time, to decide what changes are ascribable to the normal operation of economic forces and what to legislative action. The effects of the Exchange Act, however, are in some respects so obvious that it is safe to attempt to describe them, notwithstanding the short time during

which it has been in force; and this attempt is worth while. A survey of the mode in which this measure has worked and is working not only indicates the obstacles which must be encountered by any endeavor to regulate such transactions: it confirms the familiar experience that statutes which would annihilate certain economic phenomena without due regard to their history and development are worthless, and must either be repealed or become in practice inoperative. We shall begin by considering the mode in which professional dealings in securities by bankers and brokers have been affected, and what shape they have taken under the influence of the act, proceeding then to its effects on the grain trade and on other allied trades.

It has already been noted that the bankers and brokers of Germany differ from those of England and the United States in that they combine independent dealing in securities with buying and selling on commission. Their independent dealings include not only the purchase and sale of securities already on the market, but the emission of new securities. This latter function is exercised more especially by the large incorporated banks and banking houses, while the first mentioned is carried on by a considerable number of banking concerns of moderate and even of small capital. The new act affects the situation to the advantage of the large banks and banking houses. The small bankers have been largely crowded out of their commission business by the larger institutions, whose capital enables them, even after the passage of the act, to carry on transactions of this sort to as great an extent as before, and even to a greater extent. The smaller houses cannot maintain themselves as mere brokers; they relinquish their commission business, and are in greater and greater degree simply dealers on their own account, becoming "their own best customers." For such a house the alternative is either to be absorbed by a large institution or to dis-

appear as a banker and become simply a speculator. This tendency has been strikingly shown recently in the repeated cases of absorption of other houses by our great banks, with an attendant increase in the capitalization of the latter.

This greater centralization in that part of the banking world which is chiefly concerned with dealings in securities is by no means the consequence simply of the new legislation. It rests on deeper causes, which the Exchange Act has simply strengthened. It is chiefly to be ascribed to the fact that the general public has greater faith in institutions which operate with a large capital of their own. Moreover, the business is more profitable if conducted on a large scale than on a small or moderate scale. This is in good degree due to the fact that the large bank or corporation is able to earn many commissions by simply allowing one order to offset another. If one customer gives orders to buy, another to sell the same security, both sides of the transaction can be disposed of by transfers on its own books. It may be added, too, that the banking institutions which are organized as corporations are greatly aided in absorbing the smaller concerns by the premium at which their own shares are quoted.

What, now, are the precise provisions in the act which tend to eliminate the small banker? We may recall briefly the provisions which bear more especially on commission dealings. These affect the conditions under which a broker may act as principal in dealing with his customer; the validity of transactions for future delivery; the prevention of fraud on the customer in the prices which may be charged him; and the punishment of instigation to speculation. All are designed to check illegitimate speculative transactions. Transactions for future delivery, the favorite form of speculation, are either prohibited or restricted; while fraudulent conduct on the part of the banker is subject to severe punishment. The latter

provisions are the result of a conviction, which doubtless has its justification, that the volume of speculative transactions by outsiders depends in no small degree on the extent of the profits which the bankers and brokers secure from them. The greater the broker's rate of gain, the greater is his temptation to induce a larger and larger number of persons to take part in speculative transactions. Fraudulent or dishonest manipulation of prices was formerly practised chiefly by the petty brokers, whose transactions were on so small a scale that their regular commissions, to use a common phrase, would not pay office expenses. The larger institutions would usually dispense with such manipulation. The possibility of offsetting complementary orders enabled them to secure a substantial profit even from their commission. On the other hand, their customers were often operators on a considerable scale, who divided their orders, and by comparing charges were able to make sure that no undue advantage was taken of them. The check on the operations of the smaller concerns is made the greater because of the prohibition of the *Schlepper's* operations. The methods indicated by that phrase were not practised by the larger houses, whose customers did not need to be solicited. Unquestionably, the act is here of beneficial effect, helping to check the tide of uncontrolled speculation.

The provisions as to dealings in securities for future delivery need more careful consideration. Here there is no endeavor on the part of the legislature to prevent the profits of speculative transactions from flowing into the hands of the dealer rather than the customer. The design is simply to check a particular kind of speculation, and precisely that kind which had been carried to the greatest refinement. First to be noted is the complete prohibition of transactions of this sort in mining and manufacturing securities. We need not trouble ourselves to consider whether there is an economic justification for such transac-

tions. We may even freely admit that the economic end is here less obvious than in the case of public securities, or even of shares of banking houses, which serve as one means of effecting international payments. But it is hardly to be denied that the trade in securities which exist in quantities of ten, twenty, or more millions of marks must take different form from the trade in securities whose total amounts to but one or two millions.* Consequently, we find that in Berlin the dealings in many securities affected by this prohibition are by no means limited in the manner contemplated by the new act, but have simply found new forms and new methods, which serve the same purpose as those prohibited.

We may enumerate three such new methods, designed to facilitate dealings in securities which may no longer be bought and sold for future delivery.

1. The *Gross Kassa* method. This differs from customary cash business both in the volume of the transactions and in the manner in which prices are settled. In ordinary cash transactions there is a specified price at which contracts are settled; but in the *Gross Kassa* trade contracts are settled at the going price, as in the case of transactions for future delivery. Moreover, the brokers are not here in precisely the position in which the quotation brokers are in cash transactions: they are not simply agents, but act as independent principals. In the transactions disposed of by this machinery the same units of quantity are used as in sales for future delivery. In other ways the contracts are precisely similar to those of ordinary dealings for cash.

2. Of quite a different sort is the *Kassa-Konto-Korrent* method, which has been devised in Berlin by the three brokers' banks of the city (the *Berliner Maklerverein*, the *Börsen-Handelsverein*, and the *Makler Bank*). By this arrangement the buyer is credited on the day of purchase

*We may instance such securities as the shares of the Laura Iron Works, the Dortmund Union, the Bochum Steel Works, the Gelsenkirchen, Hibernia, Consolidation, and Dannenbaum mining establishments.

with the securities bought on his account, while he is debited with the amount of the purchase price. The seller is debited on the books with the securities sold on his account, and is credited with the amount of the selling price. Transactions are settled at the close of each month, up to which date the buyer is debited with interest and the seller credited with interest. The rate of interest is agreed upon by the three banks concerned, in conformity with the ruling bank and private quotations. The most important provision, however, is that neither buyer nor seller is entitled to demand settlement before the close of the month. There is no direct arrangement for liquidation or settlement of differences; but the three banks agree upon a rate at which the securities are to be taken, and inform their customers of this rate by circular. For instance, at the close of February it was announced that Laura shares, par 15,000, would be reckoned at 24,650; Bochum shares, par 15,000, would be reckoned at 23,600; and so on. To all intents and purposes this amounts to an arrangement for settling differences. The only thing which the customer needs to reckon for himself is the interest with which he is debited or credited, as the case may be. Whether this arrangement constitutes a violation of the Exchange Act, and whether it can be permanently maintained, need not be here considered. It should be pointed out, however, that it is by no means a complete substitute for the former transactions for future delivery. The necessity of calculating interest makes the dealings cumbersome and uncertain.

3. The last form is one of delivery simply in accordance with the commercial code (*handelsrechtliches Lieferungsgeschäft*), and is least likely of all to be widely used. There are doubts as to its legal consequences, and there are difficulties in the way of convenient settlement, especially as no exchange facilities may be used.

It appears, then, that none of the methods which have come into use completely replace sales on account and for

future delivery. The transactions in securities of the prohibited sort have consequently shrunk very greatly. With both demand and supply quantitatively less, the fluctuations in price have become greater. Quotations may be sent up or down more easily than before. Particular care needs to be exercised in bear transactions, because a corner is much more easily effected than before the act went into operation. So far as can be judged, the fluctuations in price are greater since the act than before its passage.

Further, it is interesting to note that speculative transactions have begun in securities of corporations having a capital of more than twenty million marks, which formerly were not so dealt in. This fact deserves to be noticed, as showing that speculation is not to be checked by prohibiting it as to specific sorts of commodities or securities. He who wishes to speculate, if prohibited in one direction, simply turns to another.

The Exchange Register described in the preceding pages was designed to accomplish a double object: on the one hand, to check speculative transactions; on the other hand, to give a more assured legal position to such as took place. This latter object has certainly not been attained. The precise legal effect of the sections in the act which refer to it is doubtful. It is maintained by competent lawyers that these sections do no more than to prevent the defendant from pleading that actual delivery was not contemplated. It is maintained by others equally competent that they prevent a defendant from pleading that the transaction was a gambling or betting one. Consequently, the precise position of transactions of this sort before the law is no more certain than it was before, and depends upon the course of judicial construction.

What, now, is the situation as to the check to speculative transactions (for brevity we may describe transactions for future delivery as speculative)? First, we may note the following simple but significant fact. Up to May 10 the

number of persons whose names were entered on the Exchange Register in Berlin was fifty. At other cities of the empire the entries were very much less. It is tolerably clear, moreover, that for some time in the future they will not greatly increase. These small numbers are to be explained thus. The registers were designed to prevent outsiders from speculating. It was said that the outsider would not cause his name to be entered on the register, because then all the world would know him as a speculator. Both as a matter of general repute and for purposes of business credit, such public notice of participation in speculation would be unwelcome. The fees also were expected to act as a check. This has proved to be quite chimerical. It was supposed that the general public, not being registered, could not speculate, because no bankers would be willing to act for it; all of which rested on a gross underestimate of the part which faith and honor play in the industrial world. The legislature has paid no attention to such familiar facts, for instance, as the enormous transactions which the *Coulisse* carries on in Paris, and which not only are non-enforceable at law, but are actually forbidden. None the less their volume steadily increases, and the engagements made are punctually executed. Actual living needs have infinitely greater force than the letter of the law. Almost all bankers have expressed their willingness to continue to operate on behalf of unregistered clients, whose honor and good faith remain their strong security, as it had been before. Doubtless, advances are made, even to the best customers, for shorter periods than before, and debit balances are not allowed to swell to as great dimensions, it being feared that in case of death the heirs or executors will refuse payment. Doubtless, too, it happens that payment of a debit balance is demanded more promptly and insistently than before. But, barring changes of this sort, transactions go on very much as they used to. The Exchange

Register, to all intents and purposes, is a still-born child. As between the bankers, registration is entirely unnecessary. Any banker or broker who would plead the law in order to avoid payment of differences would simply cease to exist as banker or broker. It may be observed, however, that very possibly the number of entries would have been more considerable if the legal rights secured thereby had been more carefully defined in the act.

Notwithstanding all that has just been said, it is none the less true that, so far as can now be judged, the volume of transactions for future delivery has very much diminished. Transactions of this sort have in fact become unpopular in consequence of the new forms and new liabilities with which the act has burdened them.

The question still remains whether the real object at which the legislature aimed has been attained. Has speculation really been checked? Speculation in the form of transactions for future delivery has unquestionably been limited, but speculation as such certainly has not been. The truth simply is that one form of speculation has lost, while other forms have gained. The instinct seeks its satisfaction in cash transactions, whereas it formerly sought it in time transactions. Formerly a small number of securities were bought and sold in large quantities on time. Now a very much larger number of securities are bought and sold in smaller quantities for cash. But this diminution in the quantity of securities so dealt with on the average in each transaction means no diminution in the risks incurred. Cash dealings are much more dangerous than time dealings. The fluctuations in prices are much greater, because the transactions are on a smaller scale, still more because any given movement is less likely to be met by a counter movement. When prices fall for cash transactions, they usually go down abruptly, since there is no bear party which seeks cover when the downward movement sets in.

The future delivery requirements of the act serve, like others, to throw business into the hands of the large banks, since these can more easily operate for cash. They are in a much better position than the small banker to make advances to their clients, who accordingly resort more and more to the large incorporated institutions. But, as this process of concentration goes on, it becomes essential that the great institutions shall be held more rigorously to their duties. The sums intrusted to them grow apace, their importance in industry and trade increases. Their solidity thus becomes of more and more importance for the community, and the speculative side of their dealings needs to be more and more diminished. Further regulation by law of the great stock exchange houses (*Effektenbanken*) must soon come to be recognized as essential.

The consequences of the Exchange Act for the trade in grain and in similar commodities are even more striking than those which have ensued from its provisions as to securities. Briefly stated, the effect of the act has been to bring about the secession of the Prussian produce exchanges.

In order to explain this unprecedented event, we must advert to the extreme bitterness of feeling among the produce dealers. Even before the passage of the act they had been greatly irritated by the reckless attacks made upon them by the agrarians in the legislature, in public meetings, and in the press. The last straw came when the Prussian Minister of Commerce went so far as to administer the Exchange Act after the most extreme agrarian fashion. He decreed a set of regulations for the exchanges designed to bring the produce dealers entirely under the sway of their enemies, the agrarians.

The Exchange Act did not prescribe the representation of the landed and milling interests in the Presiding Body

of the exchanges. It simply authorized that such representation might be provided in the rules of the exchanges. The Prussian minister, however, thought fit to introduce compulsion. When the Ancients of the Merchants in Berlin submitted to him, on September 23, 1896, a draft of regulations for the exchange, he returned it (December 4) with a request that the following provisions should be inserted: 1. The Presiding Body should contain, so far as trade in agricultural products was concerned, five representatives of the landed interest, appointed for three years by the Minister of Agriculture, and two representatives of the milling trade, appointed also for three years by the Minister of Commerce. 2. In listing the prices of agricultural products, at least two representatives of the agricultural interest were to be called upon to take part. 3. In the publication of the official prices the chief grains should be classified according to their origin, kind, and quality (including color, dryness, odor) and according to harvest (whether old or new). The final settlement of the classification was reserved for the Minister of Commerce, after hearing the Presiding Body of the exchange. For every particular sort of grain thus admitted to classification, the highest and lowest price was to be quoted, and in addition the volume of transactions for each quality.

On the 15th of December the Ancients stated that it was impossible for them to prepare amended regulations in conformity with these requirements, on the ground that, "as representatives of the mercantile body of Berlin and as presiding officers of the exchange, they could not undertake the responsibility of co-operating in a task which they believed to be harmful and dangerous to the mercantile community." They declared themselves compelled to make these statements on various grounds. The appointment of representatives of the landed and milling interests by the ministers of state in such manner as to secure equal

voice in administration to persons not conversant with the affairs of the exchange was groundless and inexpedient. The exact enumeration of origin, quality, and the like, for each transaction, was impracticable. Notwithstanding, on December 23 the Minister of Commerce informed the Ancients that regulations for the exchange had been established as of that date. The decree as published contained the regulations as drafted by the Ancients, with the insertion of the amendments which the minister had demanded. Precisely the same course was followed in the regulations for the other Prussian exchanges.

The consequence of this proceeding was the dissolution of the Prussian produce exchanges in the last days of December, 1896. In Berlin the grain dealers on December 30, 1896, adopted the following resolution: "For a long period accusations of the worst sort have been brought against the merchants engaged in the grain trade of Berlin. No proof has been adduced in support of these accusations. In the Exchange Act and in the regulations which have been forced upon us, these unjustifiable attacks have found their full expression. The members of the Berlin Produce Exchange without exception feel their honor to be attacked by these proceedings, and therefore resolve, irrespective of any injury to their own interests, to give up all the facilities of the exchange, and not to enter upon the premises of the exchange after the 2d of January of 1897 for the purpose of carrying on transactions in grain or mill products."

In place of the produce exchange the so-called "Free Association of Grain and Produce Dealers of Berlin" was formed, which selected as the place of its operations a public house directly opposite the exchange, the so-called Fairy Palace. Here they meet as usual from day to day. They have no organization as an exchange; there are no boards of arbitration, no machinery for settling transactions or for quoting prices. Transactions do not take

place on any considerable scale, and such prices as are mentioned in the public prints give no certain information as to the conditions under which purchases and sales in fact take place. The grain trade is almost completely paralyzed; and this not merely as to speculative dealings. The established dealer and the importer know not where to turn, being unable as in former times to cover their transactions by sales of future delivery. The uncertainty of the situation makes transactions for the future almost impossible. The grain dealers have to face the possibility of being turned out of their Fairy Palace at any moment; for not only in the public prints, but in legal periodicals of standing, the general opinion is that these free associations are to be regarded as exchanges in the sense of the act, and therefore may be prohibited. Whether this opinion is sound is not easy to say, because the act nowhere gives a definition of the term "exchange." The government, however, has accepted this construction. On May 13 the President of the Province of Brandenburg sent the following communication to the Berlin Association: "At the request of the Minister for Commerce, I beg to inform you that the meetings of persons interested in the produce exchange, held in the so-called Fairy Palace, constitute an exchange in the sense of the Exchange Act of June 22, 1896. Consequently, I request your Presiding Body, in case these meetings continue as heretofore, to submit for approval within three weeks, in accordance with section 5 of the act, a draft of regulations for the exchange."

In accordance with the resolutions previously adopted the Berlin Association means to secure a judicial decision whether its meetings constitute an exchange in the sense of the act. Should this decision be against them, as is probable, an understanding between the government and the dealers would seem to be out of the question. The dealers may then give up their meetings, and endeavor to effect their transactions from office to office. As the

grain trade on a large scale is impossible without contracts for future delivery, it is difficult to see why the grain dealers should have any special interest in returning to the exchange. Their transactions will be on an insignificant scale; but, on the other hand, as they will act without any possible control either from publicity or from public opinion, they will be able to keep themselves entirely harmless in all dealings. The injured party will then be the German agricultural producer. The peasant will find it difficult to sell his grain before harvest. There is no small danger that the grain usurer will reap the profits of the Exchange Act.

ERNST LOEB.

*Berlin.*